Washington Metropolitan Area Transit Authority (WMATA): Issues and Options for Congress

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Summary

A decade ago the Washington Metropolitan Area Transit Authority (WMATA, frequently referred to as Metro), especially its Metrorail system, was viewed by many as the model U.S. metropolitan transit operation. In 2010, the view is changed. The fatal accidents of 2009, other safety problems, ongoing service interruptions, funding problems, and a perceived lack of management direction have caused many in the region and in Congress to believe that substantive changes are needed in its funding, structure, and operations. Although WMATA is a regional body, Congress played an instrumental role in its creation, and continues to play an ongoing role in the financing of the system. This report provides background information about the system, describes the major issues WMATA currently faces, and discusses possible approaches for addressing these issues.

WMATA's funding, management, and safety are the three main issues that are likely to be of most interest to Congress. Funding is a perennial problem for WMATA, as it is for most public transit agencies, because it is heavily reliant on government support to cover both capital and operating costs. Transit advocates argue that the federal government ought to substantially increase the resources it devotes to supporting buses and trains. But a general increase in federal transit funding is unlikely to make a great difference to WMATA, so many argue for special federal funding. Congress has already authorized $150 million per year over a 10-year period for WMATA, but Congress might decide to revisit this decision in light of its current problems. Other approaches might be to pursue ways to encourage WMATA to boost revenues from fares and other revenues, to encourage the jurisdictions to fund the expenses of paratransit from sources other than transportation system revenues, or to encourage states and localities to inject more competition into the provision of transit service.

WMATA's management structure, in particular its Board, is not based on a private sector corporation model, but is probably best viewed as following a public utility model. In this public utility framework, the general manager is heavily constrained by the Board in his/her ability to make crucial decisions on what would otherwise be viewed as normal business activities in a private sector transportation firm—for example, fare setting, route selection, and frequency of service determinations. Some are concerned that WMATA's Board lacks the subject expertise and political independence necessary to evaluate operational decisions in the context of what is the best decision from a transit operating perspective (e.g., maximizing productivity) as opposed to the political perspective (e.g., the popularity of a fare increase). Congress, therefore, might choose to take a serious look at WMATA's governance structure.

A number of recent incidents resulting in deaths, injuries, and property damage have raised public concern about the safety of WMATA's operations. Ultimately, safety is the responsibility of WMATA, and federal regulation of transit safety is largely prohibited by law. However, federal law requires states with rail systems, other than commuter rail systems already regulated by the Federal Railroad Administration (FRA), to establish a safety oversight program, and establish an organization to oversee safety of rail transit systems. Metrorail is overseen by the Tri-State Oversight Committee (TOC). A federal review of WMATA and its oversight reported severe problems with the TOC, including a lack of resources, and that WMATA's Safety Department is in disarray. Other reports have come to similar conclusions. One option for Congress to improve public transit safety might be to provide funding for State Safety Oversight (SSO) organizations, including funds for training. Another option might be to provide the Federal Transit Administration (FTA) with much stronger regulatory authority, as the Department of Transportation (DOT) has proposed in draft legislation.

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Introduction

Slightly less than a decade ago the Washington Metro system was viewed by many as "magnificent" and successful.[1] For some observers of the time, the Washington Metropolitan Area Transit Authority (WMATA, frequently referred to as Metro), especially its Metrorail system, was the model U.S. metropolitan transit operation. In 2010, the view is changed. The fatal accidents of 2009, the discovery of additional safety problems (both actual failures and systematic cultural issues), ongoing service interruptions, system-wide funding problems, and a perceived lack of management direction have caused many in the region and in Congress to believe that substantive changes are needed in the funding, structure, and operations of WMATA.

Although WMATA is a regional body, Congress played an instrumental role in its creation, and continues to play an ongoing role in the financing of the system. It is not a stretch to say that Metro, especially Metrorail, would not exist but for the extensive funding and support that Congress has provided to the system over the last 40-some years and continues to provide. This report provides background information about the system, describes the major issues WMATA currently faces, and discusses possible approaches for addressing these issues.

Background

WMATA was created in 1967 by interstate compact involving Maryland, Virginia, and the District of Columbia, together with the consent of Congress provided in the Washington Metropolitan Area Transit Authority Compact (P.L. 89-774). The compact, originally created for the planning, financing, building, and operation of a transit rail system in the Washington area, has been amended several times through the years for a number of reasons. Most recently, it was amended so that WMATA could become eligible to receive federal grants authorized by the Passenger Rail Investment and Improvement Act of 2008 (P.L. 110-432). The main changes to the compact were the addition of two federal representatives to the Board of Directors and the creation of an Office of the Inspector General (P.L. 111-62). Among its many elements, the compact prescribes the operational area for WMATA to include the District of Columbia, the Maryland counties of Montgomery and Prince George's, the Virginia counties of Arlington, Fairfax, and Loudoun, and the Virginia cities of Alexandria, Falls Church, and Fairfax. WMATA currently provides transit service in all of these jurisdictions except Loudoun County.

WMATA provides three types of transit service: heavy rail/subway (known as Metrorail), bus (known as Metrobus), and paratransit (known as MetroAccess). Metrorail is the largest element of the WMATA system, accounting for about two-thirds of its passenger trips. Average weekday unlinked passenger trips number about 935,000.[2] Between 1999 and 2008, ridership increased by 35%.[3] WMATA began building the Metrorail system in 1969, and opened its first stations to

[1] See, for example, William L. Middleton, "Washington's Magnificent Metro," *Railway Age*, September 2001, p. 67.

[2] American Public Transportation Association (APTA), "Public Transportation Ridership Report, Fourth Quarter 2009," March 2, 2010, http://www.apta.com/resources/statistics/Documents/Ridership/2009_q4_ridership_APTA.pdf. According to APTA an unlinked trip is defined as "a trip on one transit vehicle regardless of the type of fare paid or transfer presented. A person riding only one vehicle from origin to destination takes ONE unlinked passenger trip; a person who transfers to a second vehicle takes TWO unlinked passenger trips."

[3] U.S. Department of Transportation, Federal Transit Administration (FTA), National Transit Database.

passenger service in 1976. The originally planned 103-mile, 83-station system was completed in 2001. A 3-mile extension to Largo Town Center (Maryland) on the Blue Line with two new stations and a new station on the Red Line were completed in 2004, so that the system currently extends 106 miles with 86 stations. Work has begun on the first phase of a two-phase, 23-mile extension of the system to Dulles International Airport and a terminal station in Loudoun County, Virginia. When completed, the two-phase extension will include 11 new stations. Whereas all of the 106-mile system was constructed by WMATA, the new Silver Line is being constructed by the Washington Metropolitan Airports Authority (WMAA, the operator of Reagan National and Dulles International airports). When operating segments are completed they, along with the existing system, will be operated and maintained by WMATA. The first phase, to Reston, VA, is scheduled to open in 2013.

Metrobus provides most of the rest of WMATA's passenger trips, accounting for about one-third of overall trips. Average weekday unlinked trips number about 408,000.[4] Between 1999 and 2008, ridership declined by about 5%.[5] WMATA created the Metrobus system in 1973, when it was forced to take over four failing privately owned bus companies then providing most of the transit service in the metropolitan region. Today, WMATA operates regional bus services with costs allocated among the jurisdictions and locally sponsored bus operations with costs charged directly to the relevant jurisdiction. In some cases, local jurisdictions have decided to set up their own local bus service.[6] For example, Arlington County provides bus service and paratransit under the name Arlington Transit (ART). WMATA owns and operates about 1,500 buses on approximately 350 routes.[7]

Paratransit service provided by Metro, known as MetroAccess, began in 1994. Door-to-door service is provided for people who cannot use regular transit service, as required by the Americans with Disabilities Act of 1990 (P.L. 101-336). Less than 1% of all WMATA passenger trips are provided by MetroAccess. WMATA owns about 450 vehicles to provide service, but contracts with a private company to operate the service. The private operator has another roughly 40 vehicles, and also contracts with taxi companies to provide rides.[8] Between 1999 and 2008, MetroAccess ridership increased eight-fold from 210,000 trips to 1.7 million annually.[9] The growth in ridership has become an important issue because MetroAccess trips are expensive to provide and generate little in passenger revenue. In its proposed FY2011 budget, WMATA estimates operating costs of about $38 per MetroAccess trip, of which fares cover only 5% of those costs.[10]

WMATA is the largest but not the sole provider of public transit service in the Washington, DC, metropolitan area. Two other agencies, the Maryland Transit Administration (MTA) and Virginia

[4] APTA, Ridership Report.

[5] FTA, National Transit Database.

[6] Panel on the Analysis of and Potential for Alternate Dedicated Revenue Sources for WMATA, *Report of the Metro Funding Panel*, Washington, DC, January 6, 2005, p. 17, http://www.mwcog.org/uploads/committee-documents/pVxfXFs20050106084602.pdf.

[7] Washington Area Metropolitan Transit Authority, *Proposed Fiscal 2011 Annual Budget*, February 2, 2010, pp. 18-19, http://www.wmata.com/about_metro/docs/FY2011_Proposed_Budget.pdf.

[8] National Capital Region Transportation Planning Board, Metropolitan Washington Council of Governments, *Independent Review of the Washington Metropolitan Area Transit Authority's (WMATA) MetroAccess Service: Final Report*, November 25, 2008, http://www.mwcog.org/uploads/committee-documents/bl5dWV5Z20081201124410.pdf.

[9] FTA, National Transit Database.

[10] Washington Area Metropolitan Transit Authority, *Proposed Fiscal 2011 Annual Budget*, pp. 33, 40.

Railway Express (VRE), provide commuter rail, a type of transit not provided by WMATA. Moreover, as noted above, many jurisdictions have established their own local bus services to supplement WMATA's bus and rail service. According to data published by the American Public Transportation Association (APTA), WMATA accounted for about 88% of public transit trips in the Washington region in 2007.[11]

In terms of ridership, WMATA is the fourth-largest transit agency in the nation. Its rail system ranks second behind only New York, and its bus system is sixth-largest. Although WMATA has many unique problems operating in a multistate and multijurisdictional setting that includes the nation's capital, many of the same issues being faced by WMATA can be identified at transit operations throughout the United States.

Issues

Funding

WMATA has faced budgetary challenges through its history, in part because of its reliance on government support for a large share of its funding. WMATA, like all public transit agencies, is funded by a combination of farebox revenues and other revenues, such as parking fees, and government support from federal, state, and local sources.[12] Of all funds expended by WMATA in FY2008, about 40% were from fares and other revenues; 33% were from local government; 15% were from state government; and 12% were from the federal government.[13] In FY2008, operating and capital expenditures were 73% and 27% of the total, respectively. Most federal funds go toward capital expenses. In WMATA's case, federal funds applied to capital expenditures were $225 million in FY2008, accounting for about 42% of all capital expenditures. With another $18 million of federal funds going to operating expenditures, federal assistance in FY2008 totaled about $243 million.

Budget challenges have been heightened recently by the economic downturn that has reduced ridership, and thus farebox revenue, and other revenue such as advertising. WMATA's financial position has also been damaged by, among other things, the June 2009 crash on the Red Line that will likely increase its liability insurance costs, and increasing health care insurance premiums for its employees. In these circumstances, WMATA believes that without a change in fares or government support it faces a $189.2 million gap in its operating budget for FY2011 of $1,489 million.[14] WMATA has proposed several options for dealing with this budget gap that combine various mixes of fare increases, service cuts, and increased government support. On the capital side, WMATA believes it has about $11 billion worth of capital needs over the next 10 years, or $1.1 billion per year, whereas its capital budget for FY2011 is $721.3 million.[15]

[11] American Public Transportation Association (APTA), Public Transportation Fact Book, 2009 (Washington, DC, April 2009, tables 3 and 4, http://www.apta.com/gap/policyresearch/Documents/APTA_2009_Fact_Book.pdf.

[12] For more information, see CRS Report RL34183, *Public Transit Program Funding Issues in Surface Transportation Reauthorization*, by William J. Mallett.

[13] FTA, National Transit Database.

[14] WMATA, *Proposed Fiscal 2011 Annual Budget*

[15] Ibid.

Many attribute WMATA's troubles to the fact that unlike most other major transit agencies it has not, for most of its history, received much state and local government funding from dedicated sources.[16] A dedicated revenue source, according to the Federal Transit Administration (FTA), is "any funds raised specifically for transit purposes and which are dedicated at their source, rather than through an appropriation of general funds."[17] Thus, WMATA has been largely reliant on state and local government annual appropriations. Many contend that this has constrained funding, made it more uncertain, and, therefore, made it difficult to do long-term planning.[18] A lack of dedicated funding may also damage a transit agency's credit rating and thus increase the cost of borrowing. To encourage Maryland, Virginia, and the District of Columbia to provide WMATA with dedicated funding, Congress enacted Title VI of the Passenger Rail Investment and Improvement Act of 2008 (P.L. 110-432), which authorizes $1.5 billion of federal funds over 10 years if the states and the District match this money with dedicated funding. To take advantage of this opportunity, the jurisdictions amended the compact and Congress granted its consent (P.L. 111-62). The first $150 million of federal money was appropriated in the Consolidated Appropriations Act, 2010 (P.L. 111-117). In unrelated legislation, WMATA also received $201.8 million from the American Recovery and Reinvestment Act of 2009 (ARRA; P.L. 111-5).

The most direct source of "dedicated" funding is, of course, the money that transit agencies generate from fares and other operating (e.g., parking) and non-operating sources (e.g., real estate agreements). WMATA does comparatively well in recovering a portion of its operating costs. In FY2009, cost recovery was 56% overall, with rail service recovering 79%, bus service 31%, and paratransit just 5%.[19] Moreover, since 1990, operating cost recovery for rail and bus service has been relatively stable, between 70% and 80% for the former, and between 30% and 40% for the latter.[20] However, government subsidies have grown substantially, according to the summary of a non-public report commissioned by WMATA's governing Board.[21] According to the summary, between FY2000 and FY2009, the amount of subsidy for MetroAccess has increased 321%, while the subsidies for bus and rail service have increased 89% and 12%, respectively. Consequently, it appears that the report recommends the agency pay close attention to cost recovery, targeting 80% in its rail system and 35% in its bus system. Not surprisingly, the report also recommends that WMATA needs to control the growth in expenditures for paratransit service.

[16] See, for example, Robert Puentes, *Washington's Metro: Deficits by Design*, Brookings Institution, Brookings Institution Series on Transportation Reform, Washington, DC, June 2004, http://www.brookings.edu/~/media/Files/rc/reports/2004/06metropolitanpolicy_puentes/20040603_puentes.pdf.

[17] FTA, National Transit Database, "NTD Glossary," http://www.ntdprogram.gov/ntdprogram/Glossary.htm#D.

[18] See, for example, U.S. Government Accountability Office, *Issues Related to Providing Dedicated Funding for the Washington Metropolitan Area Transit Authority*, GAO-06-516, May 2006, http://www.gao.gov/new.items/d06516.pdf.

[19] WMATA, *Proposed Fiscal 2011 Annual Budget*. The recovery of operating costs through farebox receipts and business revenues tends to be higher in rail transit because rail riders are typically more willing to pay for what they perceive to be a higher level of service. Moreover, rail transit tends to have higher capital costs relative to operating costs compared with bus transit.

[20] Panel on the Analysis of and Potential for Alternate Dedicated Revenue Sources for WMATA, Documents: Blue Ribbon Questions, November 30, 2004, http://www.mwcog.org/committee/committee/documents.asp?COMMITTEE_ID=177.

[21] Washington Area Metropolitan Transit Authority, *Transit Expert Conducts Assessment of Metro*, March 11, 2010, http://www.wmata.com/about_metro/news/PressReleaseDetail.cfm?ReleaseID=4361.

Management

The WMATA compact created a regional body charged almost exclusively with the goal of building and operating the Metrorail system. It has no taxing powers, has limited regional transportation planning powers, and at first it was not responsible for most of the transit services being provided in the Washington metropolitan area. The compact was designed to create a Board of Directors to oversee the Metrorail construction process and to create an operating agency for the rail system. The Board largely reflected the political concessions needed to reach agreement on moving Metrorail construction forward.[22] Although the compact has been amended to incorporate Metrobus and operating environment changes, the governance structure of the Board was not changed. As constituted until 2009, the Board had six members: two appointed by the District of Columbia's City Council, two appointed by Maryland's Washington Suburban Transit Commission, and two by the Northern Virginia Transportation Commission. The Board selects its own chairman and vice-chairman from among its membership and usually rotates these positions annually. Board members are not paid, but are reimbursed for expenses. Members serve at the pleasure of each appointing body and are not required to have any special expertise in transit and/or transportation, or to have legal, financial, engineering, or business expertise.

In 2009, the WMATA compact was amended to comply with the provisions of the Passenger Rail Investment and Improvement Act of 2008 (P.L. 111-62). This amendment required expansion of the Board to eight members, two of whom now represent the federal interest in the system and are appointed by the administrator of the General Services Administration. For the first time a Board member is required to meet a specific requirement prior to appointment by the administrator, namely that he/she is a regular user of either Metrorail or Metrobus (or both).

Perhaps the most important single duty of the Board is to appoint the system's general manager (GM). The Board also has the power to appoint several other officers, such as the treasurer and, as a result of the 2009 compact amendments, an inspector general. The GM has broad responsibilities for the organization and operation of WMATA, and oversees most of its day-to-day activities. Nonetheless, the Board retains final approval authority over most of the important decisions put forward by management. Bus route changes, capital project spending (e.g., new bus and railcar purchases), and—most importantly—fare increases must be approved by the Board. And in many cases these proposed changes require extensive public hearings before the Board will consider them.

WMATA's structure, in particular its Board, is not based on a private sector corporation model. Rather, it is probably best viewed as following a public utility model. This is not unique to WMATA. Most U.S. transit properties operate on some sort of public utility model. The differences, however, are that most other transit properties are not subject to the same level of interstate and multijurisdictional oversight and, as was pointed out earlier, many other systems have dedicated sources of funding besides fares and other business revenues.

In this public utility framework, the GM appears to have significant power in some areas, but limited power in others. The GM can make a lot of day-to-day decisions, but his/her ability to make crucial decisions on what would otherwise be viewed as normal business activities in a

[22] Zachary M. Schrag, *The Great Society Subway: A History of the Washington Metro* (Baltimore: Johns Hopkins University Press, 2006), pp. 101-103.

private sector transportation firm—for example, fare setting, route selection, and frequency of service determinations—is instead subject to Board action.

Historically, the GM position has been a flashpoint for controversy. In the 43 years that the GM position has existed there have been 13 GMs, five of whom served in either an acting or interim capacity. The longest tenure of any GM was not quite nine and a half years (Richard White). One other GM served nine years (Jackson Graham). A third GM served just over six and a half years. None of the other 10 individuals holding the position lasted more than four years. The most recent GM resigned in March 2010, at least in part as a result of the controversy surrounding the safety problems experienced by the system over the last year. The GM position has not been characterized by long-term stability, which could be construed by some as a potential management issue. Similarly, the constant rotation of the Board chairmanship has been viewed as a source of management instability. Most recently, former GM David Gunn, in his March 2010 review of WMATA's current situation, called for the Board chairmanship to be a multi-year position.[23]

During the past year's safety investigation it has been routinely pointed out that WMATA's attention to safety has been diminished at least in part by management failures throughout the organization. David Gunn's recent review pointed to similar management problems in other parts of WMATA's operations.

Safety

A number of recent incidents resulting in deaths, injuries, and significant property damage have raised serious concerns about the safety of WMATA's operations, particularly the safety of its rail service. The most serious incident was a crash involving two Red Line trains on June 22, 2009, killing nine and injuring 76. These incidents have also raised questions about the federal role in transit safety.[24]

Ultimately, safety is the responsibility of the local transit authority, in this case WMATA. Federal regulation of transit safety is largely prohibited by law. As stated in 49 USC §5334(b)(1), "except for purposes of national defense or in the event of a national or regional emergency, the Secretary may not regulate the operation, routes, or schedules of a public transportation system for which a grant is made under this chapter." However, federal law requires states with rail systems, other than commuter rail systems already regulated by the Federal Railroad Administration (FRA), to establish a safety oversight program (49 USC §5330). This safety oversight program is administered by FTA, which has established the State Safety Oversight (SSO) rule (49 CFR Part 659). Under the safety oversight program, a state must establish an organization to oversee safety of rail transit systems, and transit agencies are required to comply with the recommendations of the oversight agency (49 USC §5330(c)(2)(C)). Metrorail is overseen by the Tri-State Oversight Committee (TOC).

Despite this requirement, the enforcement of safety oversight by FTA and State Safety Oversight organizations is considered by many to be very weak. The State Safety Oversight program law and SSO rule provide no enforcement power to State Safety Oversight agencies and only allow

[23] WMATA, http://www.wmata.com/about_metro/news/PressReleaseDetail.cfm?ReleaseID=4361.

[24] See, for example, CRS Report R40688, *The Federal Role in Rail Transit Safety*, by David Randall Peterman and William J. Mallett.

FTA the authority to withhold up to 5% of a transit agency's urbanized area formula funds. The FTA administrator, presumably referring to 49 USC §5334(b)(1), argued that

> under current law, the FTA, like the TOC, has no legal authority to compel Washington Metro to respond to any of our findings. As I have testified before, the FTA is actually prohibited by law from issuing safety regulations of any kind. And the State Safety Organizations like the TOC similarly have no legal authority to compel transit agencies like Washington Metro to respond to ***their*** safety findings [emphasis in original]. They don't have to respond to them in a timely way. In fact, they don't have to respond to them at all.[25]

Although they are not required to, some states do provide their safety agencies with enforcement powers, such as ordering rail transit authorities to suspend service until a safety issue is resolved.

As part of the State Safety Oversight program, FTA conducts regularly scheduled audits of the implementation of the SSO rule. After the Red Line crash of June 2009, a scheduled audit for mid-2010 was brought forward to December 2009. A report from the audit was published March 4, 2010.[26] The audit found severe problems with safety within WMATA and with the oversight provided by the TOC.

Tri-State Oversight Committee

Among the findings on the TOC, the audit found that resources from the member jurisdictions for the operation of the TOC have been lacking, members of the TOC lack the direct authority for decision making, and communication and coordination among TOC members and between TOC and WMATA is often ineffective. For example, the audit report notes that the TOC has communicated mainly with WMATA's safety department, but not with its rail operations and maintenance departments, nor, in serious situations, with WMATA's executive staff or Board of Directors.

On the issue of resources, the audit found that until early 2009 all six members of the TOC (two each from DC, Maryland, and Virginia) were assigned to the committee as a part-time duty of their regular job. Apparently, no background in rail transit safety was required, nor was any training provided to serve on the TOC. The audit found that over its existence there has been a good deal of turnover in the membership of the TOC. On a positive note, however, the audit found that resources for contracted support for the TOC increased significantly in 2008 and 2009, and that in early 2009 Virginia committed its first full-time member to the TOC.

WMATA's Safety Department

The audit report found that WMATA's Safety Department is in disarray. The department has been reorganized three times in the past four years and has lost much of its in-house safety expertise. At the time of the audit, almost one-quarter (10 of 41) of the staff positions in the department,

[25] Peter M. Rogoff, Administrator, *Oral Statement on Federal Transit Administration's Recent Audit of WMATA and the Tri-State Oversight Committee*, Federal Transit Administration, U.S. Department of Transportation, March 4, 2010, http://www.fta.dot.gov/publications/publications_11325.html.

[26] U.S. Department of Transportation, Federal Transit Administration, *Audit of the Tri-State Oversight Committee and the Washington Metropolitan Area Transit Authority*, March 4, 2010, http://www.fta.dot.gov/documents/Final_SSO_Audit_Report_TOC_WMATA_03042010.pdf.

including all the positions dedicated to analyzing system-wide safety hazards, were vacant. The audit noted "the Safety Department does not have the in-house capabilities to perform internal safety audits and the Safety Department has insufficient resources to keep up with a growing backlog of accident and incident investigations."[27] Moreover, the audit found that the Safety Department is not an integral part of WMATA's information gathering and decision making on safety issues. Other reports have come to similar conclusions. For example, the report commissioned by the WMATA Board, discussed above, suggests that WMATA's work culture does not encourage employees to report their safety concerns without fear of retribution.[28]

Options for Congress

Funding

Funding is a perennial problem for WMATA, as it is for most public transit agencies. Because of this, transit advocates argue that the federal government ought to substantially increase the resources it devotes to supporting buses and trains. As a recipient of regular federal public transit program funds, both formula and discretionary, WMATA would benefit from such an increase. Given the number of public transit agencies around the country that receive federal support, however, a general increase in federal funding is unlikely to make a great difference to WMATA. For this reason, and because of the federal government's supposed special relationship with WMATA, many argue for special federal funding. As noted earlier, Congress has already authorized $1.5 billion over the next 10 years ($150 million a year) for WMATA as part of the Passenger Rail Investment and Improvement Act of 2008. But Congress might decide to revisit this question in light of the problems highlighted by the major Red Line crash last year. On the other hand, transit agencies in other parts of the country might question this special treatment, especially as the Metrorail system is also receiving $900 million in federal transit New Starts program funding to build the first phase of an extension to Dulles International Airport.

Another option might be to pursue ways to encourage WMATA to boost revenues from fares and other revenues. The greater the share coming from these sources, of course, the less pressure there is on government sources. The share of funding that can be derived from non-governmental sources is, in some measure, dependent on the extent to which the agency is run like a business as opposed to public utility or social service agency. To run WMATA more like a business, Congress might choose to encourage the affected state and local jurisdictions to give its management more control over setting fares and routes. Using a more business-like model is probably most difficult in the provision of paratransit service. In this case, Congress might encourage the jurisdictions to fund the expenses of MetroAccess from a source other than transportation system revenues, as the Metro Funding Panel suggested in its report,[29] such as their social service budgets.

Congress might consider these options, and others like them, specifically in the case of WMATA or more generally across the entire federal public transit program. In general, these options entail encouraging states and localities to inject more competition into the provision of transit service or to find other ways to reduce costs. This usually involves proposals to competitively bid transit

[27] Ibid., p. 7.

[28] WMATA, http://www.wmata.com/about_metro/news/PressReleaseDetail.cfm?ReleaseID=4361.

[29] Panel on the Analysis of and Potential for Alternate Dedicated Revenue Sources for WMATA.

service provision and to allow private operators to provide new services to compete with public transit agencies. This could be accomplished, according to some advocates, by making the elimination of local barriers to privatization a condition of federal funding. In many places, these local barriers take the form of state and local laws and regulations that give monopoly power to regional transportation agencies. Some advocate loosening work rules in the transit industry in an effort to boost productivity. This might, for example, include renegotiating contracts with transit workers unions that often do not allow transit agencies to employ part-time workers or to require split-shifts to cover the peaking of demand in the morning and evening. In addition, some argue that federal labor protections in transit, commonly known as Section 13(c), should be abolished or modified, a position opposed by unions representing transit workers.

Management

It is widely perceived in the transportation community that WMATA "has always been a politically weak institution with its functions restricted to transit. Although a board of local officials governs it, WMATA only participates in, and does not direct, local or regional transportation planning activities."[30]

There is some evidence that WMATA has studied and/or changed its internal organizational and management structure on numerous occasions over the last 40-some years. There is no evidence that a similar study of the authority's overall governance structure has taken place in that same time period. This is not to say that there has been universal contentment with the WMATA governance structure. The 2009 compact amendments, with their addition of two new Board members and an inspector general, prove otherwise. But even in that instance there appears to have been no serious call from the signatories to the compact to go back to square one and examine whether WMATA can, or should, be strengthened as an organization or modernized (perhaps corporatized) from a management perspective.

This situation, however, could be changing. In a recent editorial the *Washington Post* suggested among other things that "[i]t's time to rethink the compact and reengineer Metro's Board of Directors. The chairman should serve for multiple years, not just one. Elected officials should be barred from moonlighting as board members."[31]

The *Post* has not been alone in its views. The Greater Washington Board of Trade in a Letter to the Editor echoed the *Post*'s views and argued further that making positive changes in WMATA's governance structure needed to be a priority.[32]

There have been concerns expressed over time that WMATA's Board lacks the subject expertise and political freedom necessary to evaluate operational decisions in the context of what is the best decision from a transit operating perspective (e.g., maximizing productivity) as opposed to the political perspective (e.g., the popularity of a fare increase and/or its impact on specific electoral and other groups). Hence, there is reluctance to raise fares and/or make service changes in a

[30] Robert Puentes, *Washington's Metro: Deficits by Design*, p. 16.

[31] Editorial, "Getting Metro Right," *Washington Post*, March 21, 2010, p. A-18.

[32] James W. Dyke, Jr. and Jim Dinegar, "The Major Changes That Metro Needs," Letter to the Editor on Behalf of the Greater Washington Board of Trade, *Washington Post*, March 27, 2010, p. A-12.

timely fashion rather than always waiting until these decisions are necessitated by some operating crisis such as the ongoing funding shortfall.

One of the options discussed in the funding section of this report is the concept of opening at least some WMATA services to competition and/or privatization. Along these lines, representatives of the Washington Airports Task Force, appearing before a Metro Funding Panel hearing in October 2004, suggested that WMATA's performance could be improved if its structure was "allowed to follow the best 21st century practice for 'corporatized' government transportation agencies."[33] The testimony suggested, somewhat controversially, that WMATA did not need a dedicated source of public funding because it already had one—the fare box—and offered the Washington Metropolitan Airports Authority (WMAA) as a model for how a public agency could operate without additional public subsidy by maximizing revenue collection from its assets (which WMAA does through landing fees, concessions, etc.). In this context, it is important to note that it is the WMAA that is managing the construction of the new Silver Line and has taken the leadership in arranging for the line's funding.

The WMAA model is one of many options that could be considered if regional governments and/or Congress chose to take a serious look at WMATA's governance structure. Interestingly, when WMAA was created in the mid-1980s there were calls that the airports (Reagan National and Dulles International) be placed under the WMATA umbrella, an idea ultimately rejected by the Department of Transportation (DOT) and local governments. WMAA has a Board of Directors, but the organization is set up much differently, with airport management having much greater power over decision making on many issues. WMAA, it could be argued, has more lucrative assets at its disposal, although some believe this is only true to the extent that WMATA has been unable to take advantage of its property and other assets for ancillary revenue raising purposes.

It could be argued that control of WMATA by local elected officials in a public utility-like framework is appropriate, given that local government subsidies are a large part of WMATA's budget and the goals of transit are typically broader than transporting people at a price that covers its costs. These goals are often said to include highway congestion mitigation; improving environmental quality; mobility for the poor, elderly, and disabled; and economic development. Improving WMATA in a public utility framework might not involve changing the structure of its management, but rather getting Board members to provide greater attention to management duties, insisting on a higher level of professional experience, and making changes that will lead to management stability. For example, the Board chairmanship might be a four-year position instead of the one-year position it is at the moment.

Safety

Although rail and bus safety is the responsibility of WMATA and its supporting jurisdictions, Congress might decide to strengthen the role of the federal government. Currently, as discussed above, the federal government does not have the authority to regulate transit safety, nor does it provide funding to states or transit agencies specifically for transit safety initiatives. FTA's audit of rail safety at WMATA found that its oversight organization has historically had a lack of

[33] Panel on the Analysis of and Potential for Alternate Dedicated Revenue Sources for WMATA, "Comment by the Washington Airports Task Force," Public Hearing, October 19, 2004, http://www.mwcog.org/uploads/committee-documents/v11YX1g20041101143507.pdf.

resources. One option for Congress to improve public transit safety, therefore, would be to provide funding for State Safety Oversight organizations, including funds for training.

Another option would be to provide FTA with much stronger regulatory authority, as the Department of Transportation (DOT) has proposed in draft legislation.[34] This proposed legislation would replace the State Safety Oversight provisions (49 USC §5330) by amending 49 USC §5329 to add a new public transportation safety program. This new program would require DOT to establish a new rail safety program and would also provide DOT with the option of establishing a bus safety program. DOT would be empowered to conduct inspections, investigations, and audits of all aspects of public transit rail systems, except commuter rail systems that are already regulated by FRA. Moreover, DOT would be permitted to delegate this responsibility to another entity and provide grants, up to 100% of the costs, to carry out these activities. The proposed legislation provides for the development of state safety programs, including safety programs involving more than one state, with permission for DOT to provide grants. The legislation would also provide much stronger enforcement mechanisms, including civil and criminal penalties, and the ability to place emergency restrictions or prohibitions on a transit system.

As a part of the legislation proposed by DOT, the State Safety Oversight provisions would sunset three years from the effective date of final regulations of the new safety program regulations. Moreover, the legislation would amend 49 USC §5334(b)(1) to allow the federal government to regulate transit agencies "for purposes of establishing and enforcing programs to improve the safety of the nation's public transportation systems, and reducing accidents on rail fixed guideway and bus systems for public transportation."

Final Observation

WMATA remains at its core a regional/local body and responds primarily to the political and social forces of that constituency. Major changes, if they were to occur, would likely arise from regional/local concerns about WMATA. Congress in reviewing its role should be cognizant of the compact and its provisions, but nonetheless aware that large sums of federal money are at play and that it ultimately must define the federal interest in how these funds are used.

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[34] U.S. Department of Transportation, Federal Transit Administration, *Letters to Congress and Proposed Bill to Establish a Public Transportation Safety Program*, December 9, 2009, http://fta.dot.gov/documents/PelosiTransit_12_07_09.pdf.